



*A Neighborhood Organization for the Betterment of East Cambridge*

July 12, 2019

City of Cambridge Planning Board  
City Hall Annex  
344 Broadway  
Cambridge, MA 02139

**RE: The Premature Scheduling of the July 16, 2019, Planning Board Hearing**

Dear Planning Board Chair Connelly and Vice Chair HT Cohen; Planning Board Members Bacci, S Cohen, Flynn, Russell, and Sieniewicz; and Associate Planning Board Members Espinoza and Bowie:

At the next Planning Board meeting scheduled for July 16, 2019, the Board is scheduled to hear and discuss the proposed leasehold disposition of 420 parking spaces in the First Street Garage and then prepare a recommendation for the City Council almost immediately. Setting aside for the moment the severe failure of the city administration to comply with the City's disposition ordinance, c. 2.110, scheduling this hearing before the City Council's receipt of the City Manager's disposition report violates the City Manager's and Council's understanding of the ordinance's meaning embodied in the express terms of the City Manager/City Council order that set this process in motion. This order, which is attached to the Manager's report as Exhibit 6, was adopted on October 7, 2013, and says in pertinent part, "The City Manager is required to convene a community meeting to discuss the matter and submit a detailed report to the City Council, the Planning Board, and the City Clerk. **The City Council would then refer the matter to separate public hearings by the Planning Board and the City Council.**" The City Council has yet to receive the report, since it will not meet until July 29, and can take no action before that meeting.

In addition, this truncated timeline prejudices the public. One of the core purposes of the ordinance's hearing schedule is to allow the public an opportunity to weigh in on the Manager's report, and that includes sufficient time to review and discuss it before the public hearings. Holding this hearing before the City Council order provided for it, especially in the summer when much of the community is on vacation, does not allow for the full opportunity the public should have to digest this 45-page report and provide cogent public comment to help guide the Planning Board's deliberations.

Therefore the hearing on July 16, 2019, is premature, and the East Cambridge Planning Team demands the City follow its own laws and rescheduled the meeting to a date which to satisfy the original Council Order, specifically to after the Council receives the report and then refers the matter to the Planning Board for a public hearing.

Very truly yours,

A handwritten signature in black ink, appearing to read "C. T. Hinds".

Charles T. Hinds  
President, ECPT

Heather Hoffman, Esq.  
ECPT Board Member

cc: Paula M. Crane, Interim City Clerk  
Louis A. DePasquale, City Manager  
City Council



*A Neighborhood Organization for the Betterment of East Cambridge*

July 15, 2019

City of Cambridge Planning Board  
City Hall Annex  
344 Broadway  
Cambridge, MA 02139

**RE: City Manager's disposition report on the First Street Garage**

Dear Planning Board Chair Connelly and Vice Chair HT Cohen; Planning Board Members Bacci, S Cohen, Flynn, Russell, and Sieniewicz; and Associate Planning Board Members Espinoza and Bowie:

Anyone who reads our letter on the fatal flaws in the parking study commissioned by the City would be wary of trusting a disposition report that relies on that fatally flawed study. The City Manager seems to look at this as just a monetary transaction, where Leggat McCall Properties pays the City to hand over whatever LMP wants, in this case 420 parking spaces in a municipal garage that the City's own parking study concludes cannot support that lease. He pays scant attention to whether this is actually a good financial and social deal for the City or whether it will have detrimental effects on a neighborhood that already suffers more than its share of burdens so the City can fill its coffers with developer money. The report also misstates, omits and minimizes the requirements of the City's disposition ordinance, c. 2.110, and fails in material ways to comply with it. Information has been hidden that anyone would want to see in order to evaluate the City Manager's recommendation. The entire process has been as far as possible from "robust and transparent", despite the Manager's claims.

**1. The City goes about disposing of property backwards and gets a bad result because of it.**

We disagree strongly with the City's position on how it should dispose of public property. The obvious intent of the disposition ordinance is to conduct a comprehensive public study of property the City deems surplus in order to figure out how best to use it and whether and how to dispose of it. Out of that comprehensive public study, the City could then create a Request for Proposals that truly reflects the range of possible uses for the property and best meets the expressed needs of the public. The City, on the other hand, thinks that it should wait for some private party, like a major developer, to decide that it would like to own property that currently belongs to the City and to ask the City to sell or lease it. Then, without any consultation with the public or consideration of whether this is actually a good idea, the City Manager asks the City Council to declare the property available for disposition, puts out an RFP precisely tailored to the developer's request and accepts the sole bid from the developer who asked in the first place. Only then does the City turn to its own ordinance and do the study that ought to have been done in the first place. Such a system seems to be the embodiment of the favoritism the ordinance forbids.

Members of the East Cambridge community raised this issue at the meeting called by the City Manager on October 30, 2018 (which he left early). The Deputy City Manager, Lisa Peterson, stated that the reason the RFP was issued first was that the city administration thought it would be easier for the community if we didn't have to think about a lot of choices. The fact that the disposition ordinance requires consideration of the full range of alternative uses of the City property under discussion was dismissed out of hand.

**2. The entire process, from start to finish, has been orchestrated so as to allow only LMP's proposal to be considered, no matter what the public thinks and no matter what the ordinance says.**

Even though the City Solicitor and the Deputy City Manager confirmed to the City Council at its meeting on November 18, 2018, that the City Manager would be evaluating alternative uses as required by the disposition ordinance, the disposition report says that no alternative use other than doing nothing was even considered. The fact that the public has repeatedly addressed possible alternative uses is not even mentioned. One very obvious alternative that falls within even the City Manager's blinkered view of the property to be disposed of is to offer parking passes to the people on the waiting list, rather than letting LMP jump the queue. The report

fails to comply with the clear directive of the ordinance on this point.

**3. The City has failed to notify “potentially affected persons” of its plans.** The City has made no effort to inform current garage users of its plans. The ordinance requires that advance notice of such [community] meetings shall be given to potentially affected persons describing the proposals under consideration.” How can the City argue that current garage users are not entitled to notice under this provision? Thus, the Manager failed to comply with one of the most basic requirements of the ordinance.

**4. The City has tried to keep the community from discussing the issues mandated by the ordinance.** The City has repeatedly tried to limit attendees’ expectations for public discussion at the public meetings, even though the ordinance lists the issues that should be the subject of the mandated public meeting(s). The first meeting, on October 30, 2018, was called to discuss what kind of retail the public wanted to see in the storefronts the City has failed to lease for years, ever since a fire closed the very popular restaurant Indochine in 2006. The City Manager thought that this would count as the required community meeting, but the overflow crowd at the meeting pushed back and forced the Deputy City Manager to promise another meeting (the City Manager left early for another engagement, even though he had insisted on the date for the meeting). Nonetheless, the disposition report falsely cites this as a community meeting called for by the ordinance.

At the next City Council meeting, Councillors introduced and discussed with city staff a policy order that grew out of the public discontent with the October 30 meeting. The resolution called for the City Manager to “conduct a comprehensive, independent parking and planning study of the neighborhood and use of the First Street Garage, within 6 months and include it in the disposition report as required by 2.110, Section B.6, so that the Council can make an informed decision as to whether the proposed disposition is in the best public interest.” The City unveiled preliminary results of the parking study at an open house on March 26, 2019. Among the public criticisms of the preliminary study was the study area. People objected that the study area for a parking lease intended to service a building bounded by Thorndike, Second, Spring and Third Streets stopped at Third Street. People also objected to how the consultants counted available parking spaces. We were assured that this open house was in no way intended to fulfill the ordinance’s community meeting requirement, yet the disposition report falsely counts it anyway.

The flyer for the final meeting on June 19, 2019, calls it “the third community meeting about the future of the First Street Garage” but described its purpose a lot more narrowly. It stated that the City would provide a status update on the disposition and on the “First Street Area Parking Planning Study” and that “[t]he City is seeking your input on the proposed leasehold disposition of 420 unassigned parking spaces and approximately 9,000 square feet of ground floor retail space in the First Street Garage.” That’s a far cry from “the future of the First Street Garage”, which is what we read the ordinance to require. The meeting itself consisted of the Deputy City Manager’s announcement that this meeting was intended to be the community meeting required by the ordinance, followed by the City’s presentation of the parking study (dissected in detail in a second letter) and extensive public comment on a much broader range of subjects than what city officials were there to discuss. The disposition report contradicts the Deputy City Manager’s announcement, falsely calling this the third community meeting.

**5. The disposition report hides the truth.** The disposition report does not accurately describe the public comment at the June 19 meeting. First it suggests that comments were evenly split between pro and con, when comments were actually approximately 60 percent against the lease and 40 percent in favor. It suggests that people speaking against the lease didn’t live in the neighborhood, when many neighborhood residents actually spoke against it and criticized the process and the accuracy of the parking study. It repeats without comment the outright fallacy that no one but courthouse users were allowed to park in the garage until after the courthouse was closed, even though the City’s own materials make it quite clear that that was not true. Moreover, the disposition report cites the number of speakers who were for or against **the Courthouse**

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**Project**, which is not the subject of this disposition process and should not be considered in the decision whether to dispose of the **parking**. In particular, turning the Commonwealth's failure to maintain the courthouse and the City's silent acceptance of that by its failure to advocate for its residents' health, safety and welfare into a reason for approving this lease makes a mockery of any sort of reasoned, honest decision making process. The ordinance requires that the disposition report address the community's concerns, which this report does not do. Mere recitation of a sample of the comments is not responding to them, so the report fails to comply with this mandate of the ordinance.

**6. The meetings are for show, not for substance.** One comment that was omitted had to do with the preparation of the disposition report. The meeting materials included a timeline for the process that said that the disposition report would be made public on June 24. The commenter pointed out that this meeting was being held on Wednesday night and the deadline for getting items on the June 24 City Council agenda was 3:00 the next day, Thursday, June 20. The commenter then said that it was highly unlikely that the Manager could meet that schedule unless he'd already written the disposition report and was not going to listen to anything said during what we'd just been told was the community meeting required by the ordinance. He issued the disposition report on June 26 and did not reconsider or reissue it even though the parking study was reissued in order to correct a material error on June 27.

**7. The Manager's recommendation undermines LMP's special permit requirements.** The disposition report ignores the terms of LMP's special permit that require that 1/3 of the 24 apartments be set aside for middle-income renters, something that was considered important at the time and which seems to be at least as important for the City now. In order to sweeten its deal, LMP is promising to set aside all 24 apartments for low- or moderate-income renters. If we have learned anything in the hours of meetings and reams of commentary on the proposed affordable housing overlay, it is the plight of middle-income residents of this city, who don't qualify for inclusionary apartments but cannot really afford market rates either. They're apparently just another group of residents to be sacrificed so that the City Manager can claim that the lease to LMP is a great deal for the City.

**8. The disposition report omits required financial information and overstates community benefits.** The ordinance requires the disposition report to include "[a] review of the financial arrangements being recommended, including two independently prepared impartial appraisals of such property's worth that contain an independent, good faith estimate of such property's worth to the prospective buyer, transferee, or lessee." The Manager is refusing to share the appraisals he claims to have with the public, the Planning Board or the City Council, even though the ordinance appears to require that they be included in the report. Moreover, the value of 420 parking spaces **to the prospective lessee, Leggat McCall Properties**, may well be much higher than its value to other possible lessees. How can anyone make an informed evaluation of the Manager's recommendation without seeing those appraisals? Additionally, the disposition report overstates the community benefits provided by the proposed lease by incorrectly and misleadingly including benefits associated with the Courthouse Project. Once again, the City property under discussion is a lease of parking spaces and retail space in the First Street Garage. The courthouse is not City property and is not part of this process. Once again, the report fails to comply with the ordinance.

**9. The Planning Board did not already approve leasing spaces in the First Street Garage to LMP.** One of the most deceptive claims in the disposition report is that the Planning Board already decided the issue before you. The Planning Board had no information whatsoever on the First Street Garage other than its location and existence when it was deciding whether to grant LMP's special permits. There was no parking study. There was no public discussion with "potentially affected persons". There was no financial information. There was just reliance on the City's assurances that the Garage was available with nothing whatsoever to back it up, in the face of public comment denying that there was space available in the Garage. As detailed above and in our letter regarding the fatal flaws in the parking study, the City Manager is still withholding information mandated by the ordinance and failed to comply with it in myriad other ways. However, even the

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insufficient information the Planning Board has now leads to the inevitable conclusion that it should recommend that the City Council reject the lease.

**10. The City Clerk did not “post notice of this hearing at various conspicuous locations upon the City property.”** If we accept for the sake of argument the City’s position that the City property in question is solely 420 unassigned parking spaces and the retail storefronts on First Street, then the City has not posted notice, conspicuous or otherwise, on any of it. There are no notices inside the Garage or on First Street. The three notices we found upon inspection were unlikely to be noticed by anyone who wasn’t specifically looking for them, unlike the prominent boards that the Planning Board uses for special permit hearings, for example. They were two pages of white letter-sized paper inside plastic sleeves, with the only prominent aspect being the large words “Planning Board”. Two are posted on windows on the Thorndike Street side of the building, not on the door on that side of the building. The third, arguably the only one in a conspicuous location, is posted facing out next to the Second Street door under the sculpture. There are no notices in the stairwell, no notices in the elevator lobby or the elevator. Like everything else the City has done with respect to this process, it has been done in a way that at most conforms with the most minimal possible interpretation of the requirements of the ordinance and never to its spirit. Were this a Planning Board special permit proceeding, large notices would have been prominently posted on all four street sides of the building. This Board cannot countenance such a half-hearted attempt to do as little as possible to inform affected members of the public of this hearing. This is neither “robust” nor “transparent”; it is yet another attempt to keep the public from knowing about and weighing in on a major transaction that will have a huge effect on people who currently use the garage, the small local businesses whose customers depend on its availability, and the surrounding neighborhood that will suffer the consequences of the loss of this crucial public asset.

This disposition process has been a sham from start to finish. Instead of conducting the well-informed public process required by law — gathering inputs, weighing alternatives, evaluating financial implications, and analyzing a broad base of input to direct disposition so as to attain the highest and best use of the property in question — the City Manager effectively cut a deal directly with LMP. The Request for Proposals was tailored for the needs of one and only one bidder, thereby eliminating better bids or better ideas. Instead of doing a parking study to inform the process, the City signed a conditional lease before the parking study was even begun. Cambridge citizens have vehemently protested this malfeasance at every step, but that has barely put a crimp in the relentless march towards the City Manager’s goal of giving LMP everything it wants. The fact that the report pays lip service to the disposition ordinance while actually complying with almost none of its most basic requirements is an insult. The only proper response from the Planning Board is a resounding No.

Very truly yours,



Charles T. Hinds  
President, ECPT

Heather Hoffman, Esq.  
ECPT Board Member

cc: Liza Paden, Planning Board, [lpaden@cambridgema.gov](mailto:lpaden@cambridgema.gov)





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City of Cambridge Planning Board  
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344 Broadway  
Cambridge, MA 02139

**RE: First St Garage Parking Study**

Dear Planning Board Chair Connelly and Vice Chair HT Cohen; Planning Board Members Bacci, S Cohen, Flynn, Russell, and Sieniewicz; and Associate Planning Board Members Espinoza and Bowie:

The parking study commissioned by the City and reviewed and adopted by Director of Traffic, Parking and Transportation Joe Barr and City Manager Louis DePasquale that is supposed to support the conclusion that there are enough parking spaces available to allow the City to lease 420 of them to Leggat McCall Properties is fatally flawed. Indeed, a close reading raises the question of whether the conclusion was written first and then the facts were fixed around the desired answer. Unfortunately, the facts are so bad that even this study concluded that there aren't anywhere near enough spaces in the garage to accommodate LMP's request. Nevertheless, Mr. Barr and Mr. DePasquale have recommended moving forward with a course of action that is contraindicated by the study.

**1. Did the study ask the right question?** If the City wanted an actual planning and parking study of the First Street area, as the City Council requested, as the City Manager promised, and as common sense would dictate in this situation, the consultant would have been asked to evaluate, for example, the number of publicly available parking spaces in the study area, both currently and in the expected conditions of the next several years. The Council's own policy order passed on November 19, 2018, requested the City Manager to "conduct a comprehensive, independent planning and parking study of the neighborhood and use of the First Street Garage, within 6 months and include it in the disposition report as required by 2.110, Section B.6, so that the Council can make an informed decision as to whether the proposed disposition is in the best public interest." Instead, as the summary states, "This study evaluates the potential effects that leasing 420 additional unassigned parking spaces in the garage could have on parking demand in the area, now and in the future." That is hardly comprehensive, and it fails to meet the other criteria adopted by the City Council and affirmatively promised by both Mr. Barr and Mr. DePasquale in public discussion with the City Council. Just calling it "The First Street Area Parking Planning Study" doesn't make it so. The question asked was not a comprehensive planning question; it was narrowly tailored to make the case for the City Manager's desired outcome. In a rational scientific setting, such a study would be criticized and dismissed for obvious confirmation bias.

**2. On what days did they collect their data?** Neither Mr. Barr nor the Manager looked at a calendar to see whether the supposed weekdays on which parking data was collected were appropriate choices to serve as samples. Had they done so, they would have seen that they were actually Saturdays, *not* weekdays. An East Cambridge resident, Kate Skubecz, pointed out the error

in a letter to city officials. New dates, said to be the actual dates on which the data were collected, were inserted in the parking study and it was reissued. However, the City Manager had already issued his report based on the flawed study. It is disturbing that he did not consider it necessary to reconsider and reissue his report in light of the admission that material terms were wrong in the study he relied upon.

**3. Were other material calculations in the parking study wrong or materially misleading?** The study claims there are 5707 privately-owned off-street parking spaces in the study area and that approximately half of those spaces are unused at any time. However, 3507 of those spaces are *never* available to the public; they are exclusively for residents or tenants of the buildings they're located in. This is not a small error. Thus, it is materially misleading to suggest that there are thousands of spaces available if people displaced from the First Street Garage cannot use them.

Most of the parking lots included in the remaining 2200 allegedly available spaces are not commercial parking lots at all. There used to be a public lot at 201 Cambridge Street, but it closed more than two years ago. At least some of the people who used to park there now use the First Street Garage. The lot at the corner of Third and Charles Streets across from Desfina has never been a commercial lot, and it has plenty of signs warning people not to park there. How did a professional parking consultant make a field visit to these two lots and not notice that they are not commercial parking lots open to the public? Not only does the Hotel Marlowe not have its own parking, but the parking it has is in the CambridgeSide Mall underground garage and just has the Hotel Marlowe logo stenciled on it (although hotel guests can use any space in that garage if they wish), so the study double-counted those spaces. How did a professional parking consultant get this wrong, when it's obvious there is no parking at the Marlowe at all?

The study also materially misrepresents how many spaces are available to the public in the First Street Garage. Under the terms of the UDAG Agreement and the leases provided on the City's website, certain leases provide for exclusive use of a given number of spaces for the lessees. In other words, many spaces the study counts as "open" are reserved for private use. They are *not* publicly available. They are marked off-limits in the Garage (which the parking professionals who conducted the field counts apparently didn't notice or understand), so the study wrongly counts those privately reserved spaces as open and available for public use. This is why people can have a parking pass yet still be unable to find a legal space in the Garage. In fact, anecdotally, we understand this is a regular occurrence. The study assures readers that passes will still be available for Cambridge residents willing to pay the monthly charge, but it leaves out the inconvenient fact that they may not find a space because the Garage is regularly effectively full, with no public spaces left. The study's blithe assurance that no Cambridge residents will be harmed or inconvenienced by LMP's lease of 420 spaces feels fraudulent at the very least when it is quite clear that the City is currently selling people parking passes knowing that they will often not be able to find a space to park in. The distribution of 420 more passes cannot possibly improve this situation, but will instead inevitably send people spilling out onto the street with little or no alternative.

**4. Why is there a waiting list for parking passes if there's so much room available?** The study confidently states, "It appears that the amount of parking provided in the garage today comfortably accommodates existing demand throughout the day." Except that it doesn't. For no good reason we can imagine, neither the City nor the consultants asked garage users whether they think there's enough room in the garage, nor did they even notify them about the proposal to lease 420 spaces to LMP. Cambridge resident Abra Berkowitz interviewed several garage patrons for a piece that appeared in a recent Cambridge Chronicle. Not a single one of them knew about the City's plans, and they weren't happy. This mirrors our experience as well. Regular garage users we have talked to found out about the proposed LMP lease from us, not from the City. We have heard over and over that the garage is often functionally full, *i.e.*, no spaces available except for the reserved ones that the public can't use, by mid-morning. In fact, the study lauds the benefits of shared parking while failing to note that the busiest time periods for current use are exactly the time periods the proposed lease will increase garage usage. That is not shared use; that is overloading an already overloaded garage.

As noted earlier, the study does indeed conclude that the garage would regularly turn away dozens of people seeking to park there if LMP's lease is approved but dismisses that as unimportant. We thought that was the whole point of doing the study. The City has claimed all along that the garage was underutilized and could therefore accommodate this lease. However, when its own study concludes that it can't by a large margin, the consultant, the Director of Traffic, Parking and Transportation, and the City Manager move the goalposts and say it doesn't matter. People will figure it out.

The fact that there's a waiting list of unspecified size for non-resident monthly passes, which would presumably be mostly for people wanting to park during the workday, gets no analysis. How many people are on the waiting list? How long have they been on it? Does it ever move? If there is sufficient capacity to give LMP 420 passes, why has the City not offered passes to people on the waiting list? Is it possible that the list was created precisely because the City was favoring the LMP proposal and therefore did not want to let people who already have regular business in the area get a parking pass and make it clear that the garage cannot accommodate 420 more pass holders? Why are LMP's tenants more deserving than these people? Also, how much revenue has the City passed up by not offering monthly passes to those on the wait list if there are truly spaces sitting empty? Why would the City forgo this revenue, yet cite financial benefit as a reason to lease the 420 spots to LMP? Something doesn't add up.

**5. Does a municipal garage have an obligation to the public, or is it just another profit-making business like a private garage?** It seemed obvious to us that a garage built on land taken by eminent domain, using an Urban Development Action Grant and state and city tax money, all for the stated purpose of aiding the development of East Cambridge when it could fairly be described as blighted would have an obligation to the public who funded it. The study doesn't see it that way, and neither does Mr. Barr. In his presentation at the June 19, 2019, meeting and in his cover memo to the study, he highlighted the study's conclusion that "[t]here are significant management and financial benefits associated with leasing parking to a single large customer, as opposed to large group of



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individual customers.” Most of us call those pesky “individual customers” friends, neighbors, co-workers and customers at our local businesses. Those are exactly the sorts of people the garage was built to accommodate. Yes, the Davenport Building and Ten Canal Park were also part of the original program, but that was precisely to help jump-start development in the area. No one would argue that East Cambridge is blighted now or that property values don’t support requiring new developments to provide for their own parking needs. Yet, somehow, this is exactly the argument we are supposed to accept for privatizing a significant portion of a garage that is serving the needs of the entire neighborhood, especially smaller businesses and local residents. The City is ignoring their needs, while prioritizing its own stated need to make a profit on this public asset, our municipal garage, as well as LMP’s need to make a profit elsewhere without doing what every other developer is required to do, provide for its own parking. Moreover, even if there were unused spots in the Garage (which the study clearly states there are not), the City could likely lease them for a far higher price to LMP than it is considering doing here. In other words, this is a bad deal. The City’s failure to maximize the financial benefits such a lease could provide undercuts its claim that the financial incentives support this decision.

**6. Does the study deal realistically with the proposed CambridgeSide redevelopment?** In a word, no. All of the inaccuracy and obfuscation in the parking study can’t hide the fact that the CambridgeSide mall has at least 97 percent of the publicly available off-street parking spaces in the study area. LMP tried to claim that it could simply lease spaces from the mall (it even got the Planning Board to give it a special permit allowing that **with no public hearing**), but CambridgeSide has publicly and privately taken every opportunity to deny that it would ever rent even a single space to LMP for this purpose. The study looks at what would happen if the two garages (795 spaces above-ground on First Street and 1293 spaces underground on CambridgeSide Place) at the mall become unavailable to the public through demolition or usage for CambridgeSide’s proposed new mixed-use development. The study gets truly creative at this point, drawing in a large number of parking spaces from outside the study area (326 spaces at the Hotel Sonesta), for which it has no usage data; magically reducing the assumed usage rate for LMP’s parking passes by 17.5 percent (from 80 percent to 66 percent) with no stated rationale other than the apparent need to make the numbers work; and speculating that other commercial buildings in the area will decide to become commercial garages and that the City will change its street parking regulations to allow all-day parking at meters.

There are undoubtedly other fatal flaws in the parking study, but these should be enough to convince any fair-minded person that it does not support leasing 420 parking spaces to LMP. LMP is a billion-dollar development company. It has the resources to figure out its own parking solution, just like every other developer in the area. Wishful thinking and hoping that people will just figure this out and everything will be fine, will have real negative consequences on the residents and small businesses in East Cambridge, who are already bearing the brunt of the millions of square feet of development that has happened to date and the even more millions yet to come. The City Council recognized this in its policy order last November that forced the City Manager to commission this parking study. The results are in, and the only rational answer is to just say no.

East Cambridge



Planning Team

*A Neighborhood Organization for the Betterment of East Cambridge*

Very truly yours,

A handwritten signature in black ink, appearing to read 'C. T. Hinds', with a long horizontal flourish extending to the right.

Charles T. Hinds  
President, ECPT

Heather Hoffman, Esq.  
ECPT Board Member

cc: Liza Paden, Planning Board, [lpaden@cambridgema.gov](mailto:lpaden@cambridgema.gov)

# McGREGOR & LEGERE

ATTORNEYS AT LAW, P.C.

15 COURT SQUARE – SUITE 500  
BOSTON, MASSACHUSETTS 02108  
(617) 338-6464  
FAX (617) 338-0737

OLYMPIA A. BOWKER, ESQ.  
E-mail: [obowker@mcgregorlaw.com](mailto:obowker@mcgregorlaw.com)  
(617) 338-6464 ext. 122

## **VIA EMAIL**

July 15, 2019

Cambridge Planning Board  
c/o Ms. Liza Paden  
City Hall Annex  
344 Broadway  
Cambridge, MA 02139  
[lpaden@cambridgema.gov](mailto:lpaden@cambridgema.gov)

**RE: Proposed Disposition of a Leasehold Interest in 420 Parking Spaces and Ground Floor Retail Space in the First Street Garage to Leggat McCall Properties**

Dear Chair and Members of the Board:

This Firm represents the East Cambridge Planning Team (“ECPT”) with respect to the proposed disposition of a leasehold of 420 parking spaces in the First Street Garage to the developer Leggat McCall (“Disposition”). The ECPT retained us to review Cambridge’s compliance with Cambridge Ordinance, § 2.110.010 – Disposition of city property (the “Ordinance”).

Our main conclusion is that the mandatory Report from the City Manager dated June 26, 2019, is incomplete and insufficient on its face, does not satisfy the plain requirements of the Ordinance, violates the applicable law, and compromises Cambridge’s disposition process. The disposition process to date has been defective, so it and the Report cannot be the foundation for a valid Planning Board or City Council decision.

We therefore request the Board to recommend denial of the Disposition based on the process’ and Report’s noncompliance with the Ordinance, and the obvious lack of study and consideration given to this Disposition.

### **I. Ordinance Lays Out Mandatory Report Requirements**

The Ordinance provides that the City Manager shall prepare a report. On June 26, 2019, the City Manager submitted a report “pursuant to Cambridge Municipal Code Chapter 2.110....” (“Report” or “City Manager’s Report”).

## McGREGOR & LEGERE

The Ordinance unequivocally lays out mandatory information that the City Manager's Report must include. "The City Manager *shall* prepare a report."<sup>1</sup> "The report *shall* include the following information...."<sup>2</sup>

The legal implication of the word "shall" is of a mandatory or imperative obligation.<sup>3</sup> Therefore, the Ordinance criteria, by its own terms, are mandatory.

This means the Report *must* contain the information articulated in Ordinance §§ 2.110.010 (B) (1)-(7). As described in more detail below, the Report does not.

Without compliance with the mandatory Report and specified content, the disposition process is illegal and illusory.

### **II. Report Entirely Missing Mandatory Alternatives Analysis, Pursuant to § 2.110.010 (B) (1)**

Section B of the Ordinance outlines the rudimentary requirements of the Report. The first requirement enumerated in the Ordinance is that the Report must contain "[a] description and analysis of the alternative uses for the City property, including an analysis of public benefits and drawbacks and the financial impact of each alternative."<sup>4</sup>

This is the first, but not only instance where the Report substitutes filler sentences for meaningful consideration. Page 12 of the Report attempts to satisfy the criteria, but is devoid of any substance or analysis.

An alternatives analysis is not unique to the Cambridge Disposition Ordinance. Such analyses are common tools in federal, state, and local laws to ensure informed decision-making.<sup>5</sup>

For example, under the Massachusetts Environmental Policy Act, an alternatives analysis is required and must include all feasible alternatives, in addition to the alternative of not undertaking the project (i.e. the no-build alternative) for the purpose of establishing a future baseline in relation to which the Project and its alternatives can be described and analyzed, and against which its potential impacts and mitigation measures can be assessed.<sup>6</sup>

The "alternatives analysis" in the Report is not an analysis and it is not of the alternatives. It does not describe the very real options, which in this case at a minimum are 'lease' or 'no lease.'

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<sup>1</sup> § 2.110.010 (B).

<sup>2</sup> § 2.110.010 (B).

<sup>3</sup> *Retirement Bd. Of Stoneham v. Contributory Retirement Appeal Bd.*, 476 Mass. 130 (2016); *Galenski v. Town of Erving*, 471 Mass. 305 (2015); *Hashimi v. Kahil*, 388 Mass. 607, 610 (1983);

<sup>4</sup> § 2.110.010 (B) (1).

<sup>5</sup> Massachusetts Environmental Policy Act; National Environmental Policy Act; Clean Water Act.

<sup>6</sup> 301 CMR 11.07(6)(f)(2) – EIR Preparation and Filing



**A. No Analysis of Alternatives to Leasing Garage Parking Spaces**

There is no alternatives analysis on Garage Parking Spaces. The Report only goes as far as to include a heading, and then regurgitate facts about the current garage space parking.

There is no discussion of the public benefits of leasing 420 parking spaces, or the benefits of *not* leasing those 420 parking spaces. There is no discussion of any drawbacks of leasing the 420 parking spaces, or any discussion of the drawbacks of *not* leasing the 420 parking spaces. There is also no discussion of the financial impact of leasing those spaces, nor a discussion of the financial impact of *not* leasing those spaces.

The alternatives analysis is integral to the Report, and neither the Planning Board nor City Council can make an informed decision on this proposed Disposition without this required information.

**B. No Analysis of Alternatives to Leasing Ground Floor Retail Space**

The lack of alternatives analysis on the disposition of 420 parking spaces is mirrored in the Report's section on the Ground Floor Retail Space. This report attempts to satisfy the integral components of § 2.110.010 (B) (1) in three sentences.

It is highly unlikely that those three sentences provide an adequate "description and analysis" of the alternative uses for approximately 9,000 square feet of ground floor retail space. In fact, the Report notes that there were three alternatives to be discussed in this section:

1. the City's continuing to use the proposed Leasehold of the Ground Floor Retail Area for storage;
2. the City's use of the space for potential retail leasing in the future; or
3. the proposed current disposition. Nowhere in these three sentences are benefits and drawbacks of each alternative, nor the financial impact of each of the three alternatives.

The City Manager's Report is inadequate on its face by omitting this crucial content. In our opinion, § 2.110.010 (B) (1), the first mandatory criterion of the Report, was not satisfied and this Report is legally deficient.

**III. Report Entirely Missing Mandatory Revenue and Project Costs, Pursuant to § 2.110.010 (B) (2)**

The second articulated requirement for the Report is information on "the use of the City property at the time of the recommended disposition and any actual or projected annual





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revenues or costs associated with such property.”<sup>7</sup> The Report is completely devoid of this criterion.

The Report blatantly skips this requirement, jumping from trying to address Ordinance § 2.110.010 (B) (1), directly to Ordinance § 2.110.010 (B) (3)-(4) in the next paragraph.<sup>8</sup>

Nowhere in the Report does the City Manager provide information on current revenue generated by the First Street Garage as a whole, nor any information on revenue generated by the various iterations of parking schemes, whether they be monthly passes, long-term leases, or daily parkers. There is no information on revenue generated (or not generated) by Ground Floor Retail Space, nor any information on the revenue or costs associated with the City using the Ground Floor Retail Space as storage.

The Report does not include this mandatory information, so again, the Planning Board (and City Council) are unable to appropriately evaluate the impact of the proposed Disposition.

### **IV. Report Lacks Sufficient Information Regarding Necessary Studies, Pursuant to § 2.110.010 (B) (6)**

The Ordinance also requires the Report to include “traffic and parking studies, and other appropriate analyses of the impact on the neighboring area and the City as a whole.”<sup>9</sup>

The Report does not include a traffic study. The only study the Report alludes to is an inaccurate Parking Study.

Notably, the Parking Study referred to in the Report was released on June 14, 2019. The Report was issued on June 26, 2019, and included a summary of the June 14, 2019, Parking Study. On June 27, 2019, a second iteration of the Parking Study was issued, making substantial changes, such as swapping data designations from “weekends” to “weekdays.” To the best of the public’s knowledge, the Parking Summary attached to the Report was never updated.

### **V. Rushed Process Shortcut the “Fair Analysis” Requirement in § 2.110.010 (A)**

One of the pillars of the Ordinance is ensuring there is a “fair analysis of how the greatest public benefit can be obtained from the City property in question.”<sup>10</sup>

The process of crafting the required Report has been objectively unfair to date. For example, the 91-page Parking Study—which informed much of the content of the Report—was issued on June 14, 2019 (a Friday). The only public meeting on the topic was held on June 19<sup>th</sup>, 2018—just five days later on the following Wednesday. The time frame between the release of

<sup>7</sup> § 2.110.010 (B) (2).

<sup>8</sup> Report, page 12.

<sup>9</sup> § 2.110.010 (B) (6).

<sup>10</sup> § 2.110.010 (A).



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the Parking Study and the only opportunity for the public to comment on it was too short for meaningful review and feedback.

This is emphasized by the fact that careful readers, after the June 19<sup>th</sup> meeting, pointed out blatant flaws with the Parking Study, such as tables purporting to show weekday data actually having been recorded on a weekend.

This fundamental unfairness was compounded by the rushed delivery of the Report to the City Clerk, Planning Board, and City Council just a week later on June 26<sup>th</sup>. The short time frame between the (first) Parking Study release, public comment opportunity, and final Report shows little time for meaningful consideration of public concerns and analysis of whether the Disposition provides the greatest public benefit.

This lack of due process exhibited in this Disposition so far does not stop there. On the same date the Report was released, the City scheduled the two public hearings required by the Ordinance: a July 16, 2019 Planning Board Hearing, and a July 29, 2019 City Council Hearing. The City Council hearing cannot take place unless the Planning Board has first held a hearing, studied the Report, and submitted its recommendations to the City Manager for transmission to the City Council.

This premature scheduling of back-to-back hearings was done under the gross assumption that the Report was legally sufficient (which it is not), that the Planning Board could hear all public comments at a single meeting (and carefully consider them), draft a thoughtful recommendation, and submit it to the City Manager within a matter of days

The Ordinance does impose time frames to ensure the disposition process runs in a timely manner. However, those time frames are “no sooner than two weeks” for the Planning Board to hold a public hearing after receipt of a legally adequate report, and “within six weeks” the City Council should hold its public hearing. The process taking place before us was jammed into less than 35 days—and legally should not have begun as the Report does not satisfy even the most basic requirements.

### **VI. The Report Contravenes the Purpose of the Disposition Ordinance**

In addition to the foregoing, the content and procedural aspects of the Report contravene the purpose of the Ordinance.

The Ordinance provides that a disposition can only occur “when the public purpose is found to be best served” by said disposition.<sup>11</sup> The Ordinance does not say this determination is made at the sole discretion of a single person or board—hence the multiple public participation requirements in the Ordinance.

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<sup>11</sup> Ordinance § 2.110.010.



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For a determination that the public purpose is best served by a disposition, that determination must be supported by factual and technical documentation in the record. For a determination that the public purpose is best served by a disposition, that determination must be in line with the legislative intent of the Ordinance.

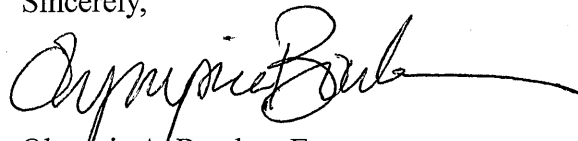
As discussed above, the legally-deficient Report and illusory public participation cannot support a fair or calculated determination that this Disposition will best serve the public purpose, as opposed to other alternatives. This is especially true when those other alternatives have not been analyzed at all. "Best" cannot be determined if there is no meaningful comparison to other options.

### VII. Conclusion

The Report required by § 2.110.010 (B) of the Ordinance is legally incomplete and insufficient, and compromises the purpose and effect of the disposition process. The Report does not satisfy the requirements of the Ordinance, and cannot serve as the basis for disposing of City Property pursuant to the Ordinance.

We therefore request the Board to recommend denial of the Disposition based on the Report's proven noncompliance with the Ordinance and plain lack of study and consideration given to this disposition.

Sincerely,



Olympia A. Bowker, Esq.

